Tebin bin Mostapa (as administrator of the estate of Hj Mostapa bin Asan, deceased) v Hulba-Danyal bin Balia & Anor (as joint administrators of the estate of Balia bin Munir, deceased)

COURT OF APPEAL (KUCHING) — CIVIL APPEAL NO Q-02(A)-1470–08 OF 2016
DAVID WONG, HAMID SULTAN AND UMI KALTHUM JJCA
27 JULY 2017

Statutory Interpretation — Construction of statutes — Intention of statute — Appellant applied to remove caveat on land — Locus standi — Whether appellant as 'administrator' had locus standi to remove caveat in context of the Sarawak Land Code ('the SLC') — Whether policy and rationale of the SLC was that of registration — Whether courts were constitutionally duty bound to interpret words as they appeared in s 177 of the SLC — Generalia specialibus non derogant — Whether principle applied

Sometime in July 1986, the appellant's father had entered into a sale and purchase agreement ('the SPA') to sell two parcels of land situated in Sarawak ('the lands') to the respondents' father for the sum of RM10,368, which was fully paid by the respondents' father. The SPA was conditional and subject to the consent of the relevant authorities. On 31 July 1986, the respondents' father lodged a caveat on the lands. Both the owner and purchaser of the lands had since died but the consent of the relevant authorities had not been obtained till date. On 27 September 2010, the appellant became the administrator of the estate of his father. Subsequently, the appellant filed an application to remove the caveat lodged by the respondents' late father. The respondents objected to the application and submitted that the appellant did not have the locus standi to remove a caveat in the context of the Sarawak Land Code ('the SLC'). The High Court judge found that the appellant had no locus standi in the context of s 177 of the SLC to remove a caveat on the lands and hence dismissed the application by the appellant to remove the caveat. It was that decision which was appealed against by the appellant. In this appeal, the appellant argued that the cases which the respondents relied upon were made per incuriam as those cases did not consider the provision of s 218 of the SLC and also other sections of various statutes. Premised on s 218, the appellant submitted that by virtue of the definition of a proprietor to include an administrator, the description of a registered proprietor under s 177 should also include an administrator, which in this case would mean the appellant, who as an administrator would have the locus standi to apply for removal of caveat under s 177 of the SLC.

Held, dismissing the appeal with costs of RM5,000:

(1) **(per David Wong JCA, majority)** Looking at it in a holistic manner, a practical interpretation to s 177 of the SLC would be to include an administrator such as the appellant. However, the courts had to adhere to their paramount constitutional duty and that was not only to interpret but also to enforce the laws enacted. And in interpreting what the law was, the courts had to expound the language of the Act in accordance with settled rules of construction. The golden rule of interpretation in construing a statute was to ascertain the true intention of the Legislature and in doing that the courts were duty bound to adopt an approach that promoted the purpose or object underlying that particular statute. Reverting back to s 177, it was housed in the Sarawak Land Code. The Land Code is a 'Torrens Title' piece of legislation. Torrens title is a system of land registration, in which a register of land holdings maintained by the state guarantees an indefeasible title to those included in the register. Land ownership was transferred through registration of title instead of using deeds. Having established that the policy and rationale of the Land Code was that of registration, and upon then looking at s 177 it became clear that the paramount word in that section was undoubtedly the word 'registered'. In plain English, unless one had a registered interest in the scope of the Land Code, one had no locus standi. Under such circumstances, the courts were constitutionally duty bound to interpret the words as they appeared. There was no room to interpret in any other way and to do so would be entering into the realm of legislating, which could never be the duty of the courts (see paras 22–26 & 28).

(2) **(per David Wong JCA, majority)** Further, this interpretation was nothing more than an application of one of the basic principles of statutory interpretation known as 'generalia specialibus non derogant', which means universal things do not distract from specific things. This proposition of law states that when a matter falls under any specific provision, then it should be governed by that provision and not by the general provision. The general provisions should submit to the specific provisions of law. In this case, the Land Code in which s 177 was found was the specific legislation on land matters in Sarawak while the Administration of Estates Ordinance 1948 and the Civil Law Act 1956 were general legislations relating to administration of estate (see para 29).

(3) **(per David Wong JCA, majority)** In any case, the appellant was not without remedy as he could still avail himself of s 178 of the SLC which provides that the appellant could have himself registered as the administrator of the estate of his late father and with such registration, he would have clothed himself with the locus standi to mount an action to remove the caveat (see paras 27).

(4) **(per Hamid Sultan JCA, dissenting)** It is trite that the principles

relating to interpretation of statute was an invent of the common law courts, and the often-mentioned cannons of construction such as the literal rule, golden rule, mischief rule (primary rules of construction) were strictly tools for the construction of statute. From, further development from the above primary rules of construction, courts had ventured into what now is often said as harmonious construction of statute. This concept has two parts, one was harmonious construction in relation to the various provisions of the statute itself and the other part was in relation to other statutes. In the instant case, all the decisions cited by the High Court judge did not consider the provision of s 218 of the SLC which stated, inter alia, that (a) 'in any form under the code' and (b) 'any person as proprietor' should be deemed to include 'administrators'. Thus, by applying a harmonious construction of the provisions of the statute an administrator ought to have locus standi. Such a construction would accord to common sense as well as avoid miscarriage of justice as well as absurdity in the construction of a statute. From the deliberation on construction of statute as well as harmonious construction of statutes, any reasonable tribunal appraised with the facts and laws in this area of jurisprudence would hold that the appellant was clothed with locus standi both under the SLC as well as other statutes (see paras 40–45, 48 & 51).

[Bahasa Malaysia summary

Sekitar Julai 1986, bapa perayu telah memasuki perjanjian jual beli ('PJB') untuk menjual dua bidang tanah yang terletak di Sarawak ('tanah-tanah tersebut') kepada bapa responden-responden bagi sejumlah RM10,368, yang mana dibayar sepenuhnya oleh bapa responden-responden. PJB tersebut adalah bersyarat dan tertakluk kepada kebenaran pihak-pihak berkuasa yang relevan. Pada 31 Julai 1986, bapa responden-responden memasukkan kaveat ke atas tanah-tanah tersebut. Kedua-dua tuan punya dan pembeli tanah-tanah tersebut telah meninggal dunia tetapi kebenaran pihak-pihak berkuasa yang relevan tidak diperolehi sehingga sekarang. Pada 27 September 2010, perayu menjadi pentadbir estet bapanya. Kemudiannya, perayu memfailkan permohonan untuk memotong kaveat yang dimasukkan oleh arwah bapa responden-responden. Responden-responden membantah terhadap permohonan tersebut dan berhujah bahawa perayu tidak mempunyai locus standi untuk memotong kaveat dalam konteks Kanun Tanah Sarawak ('KTS'). Hakim Mahkamah Tinggi mendapati bahawa perayu tidak mempunyai locus standi dalam konteks s 177 KTS untuk memotong kaveat atas tanah-tanah tersebut dan maka menolak permohonan oleh perayu untuk memotong kaveat tersebut. Ia adalah bahawa keputusan tersebut yang mana dirayu oleh perayu. Dalam rayuan ini, perayu berhujah bahawa kes-kes yang mana digunakan oleh responden-responden adalah dibuat per incuriam kerana kes-kes tersebut tidak mempertimbangkan peruntukan s 128 KTS dan juga seksyen-seksyen lain pelbagai statut. Berdasarkan s 218, perayu berhujah bahawa mengikut definisi

tuan punya untuk memasukkan pentadbir, perihalan tuan punya berdaftar di bawah s 177 juga patut termasuk pentadbir, yang mana dalam kes ini akan bermaksud perayu, sebagai pentadbir akan mempunyai locus standi untuk memohon bagi pemotongan kaveat di bawah s 177 KTS.

Diputuskan, menolak rayuan dengan kos sebanyak RM5,000:

(1) **(oleh David Wong HMR, majoriti)** Melihatnya dalam secara holistik, pentafsiran praktikal kepada s 177 KTS adalah untuk memasukkan pentadbir seperti perayu. Walau bagaimanapun, mahkamah-mahkamah perlu mematuhi kepada tugas perlembagaan utama mereka dan bahawa bukan hanya untuk mentafsir tetapi juga untuk menguatkuasakan undang-undang yang digubal. Dan di dalam mentafsir apa undang-undang, mahkamah-mahkamah terpaksa menjelaskan secara terperinci bahasa Akta mengikut kaedah pentafsiran yang ditetapkan. Peraturan keemasan pentafsiran dalam mentafsir statut adalah untuk menentukan niat sebenar Perundangan dan dalam berbuat demikian mahkamah-mahkamah adalah bertanggungjawab untuk mengguna pendekatan yang mempromosi tujuan atau objek yang mendasari statut tertentu itu. Berbalik semula kepada s 177, ia adalah terdapat di dalam KTS. Kanun Tanah adalah perundangan 'Torrens Title'. Torrens adalah sistem pendaftaran tanah, di mana daftar pegangan tanah yang diselenggarakan oleh kerajaan negeri menjamin hakmilik tak boleh sangkal kepada sesiapa termasuk di dalam daftar. Pemilikan tanah adalah dipindah melalui pendaftaran hakmilik sebaliknya patut menggunakan surat ikatan. Setelah membuktikan bahawa polisi dan rasional Kanun Tanah adalah bahawa pendaftaran, dan melihat kepada s 177 ia menjadi jelas bahawa perkataan penting dalam seksyen tersebut memang tidak disangsikan perkataan 'registered'. Dalam Bahasa Inggeris biasa, kecuali seseorang telah mendaftar kepentingan dalam skop Kanun Tanah, dia tidak mempunyai locus standi. Dalam keadaan sedemikian, mahkamah-mahkamah bertanggungjawab secara perlembagaan untuk mentafsir perkataan-perkataan yang terdapat di dalamnya. Tidak terdapat ruang untuk mentafsir dalam cara yang lain dan untuk berbuat demikian akan memasuki bidang mengubal undang-undang, yang mana tidak boleh menjadi tugas mahkamah-mahkamah (lihat perenggan 22–26 & 28).

(2) **(oleh David Wong HMR, majoriti)** Selanjutnya, tafsiran ini tidak lebih daripada permohonan salah satu daripada prinsip asas tafsiran statutori yang dikenali sebagai 'generalia specialibus non derogant' yang bermaksud perkara am tidak mengalihkan daripada perkara spesifik. Cadangan undang-undang ini menyatakan bahawa apabila perkara terangkum di bawah mana-mana peruntukan spesifik, oleh itu ia patut dikawal oleh peruntukan tersebut dan bukan oleh peruntukan am. Peruntukan am patut tunduk kepada peruntukan spesifik

undang-undang. Dalam kes ini, Kanun Tanah di mana s 177 didapati adalah perundangan spesifik atas perkara tanah di Sarawak sementara Ordinan Pentadbiran Estet 1948 dan Akta Undang-Undang Sivil 1956 adalah perundangan am berkaitan pentadbiran estet (lihat perenggan 29).

(3) **(oleh David Wong HMR, majoriti)** Walau bagaimanapun, perayu bukanlah tanpa remedi kerana dia masih boleh bergantung kepada s 178 KTS yang memperuntukkan bahawa perayu tidak boleh mendaftarkan dirinya sebagai pentadbir estet arwah bapanya dan dengan pendaftaran sedemikian, dia akan mempunyai locus standi untuk memulakan tindakan memotong kaveat tersebut (lihat perenggan 27).

(4) **(oleh Hamid Sultan HMR, menentang)** Ia adalah nyata bahawa prinsip berkaitan tafsiran statut adalah ciptaan mahkamah-mahkamah common law, dan kaedah pentafsiran yang selalu disebut seperti rukun harafiah, peraturan keemasan, rukun elak mudarat (rukun utama pentafsiran) adalah alat ketat bagi pentafsiran statut. Daripada perkembangan selanjutnya daripada kaedah utama pentafsiran di atas, mahkamah-mahkamah telah menceburi ke dalam apa yang sekarang ini selalu diperkatakan sebagai pentafsiran statut yang harmoni. Konsep ini mempunyai dua bahagian, satu adalah pentafsiran harmoni berkaitan kepada pelbagai peruntukan statut itu sendiri dan bahagian satu lagi adalah berkaitan kepada statut yang lain. Dalam kes ini, kesemua keputusan yang dirujuk oleh hakim Mahkamah Tinggi tidak mempertimbangkan peruntukan s 218 KTS yang menyatakan, antara lain, bahawa (a) 'in any form under the code' dan (b) 'any person as proprietor' patut dianggap untuk memasukkan 'administrators'. Oleh itu, dengan menguna pakai pentafsiran harmoni peruntukan statut pentadbir patut mempunyai locus standi. Pentafsiran sedemikian akan sepersetujuan kepada akal dan juga mengelak ketidakadilan dan juga dalam pentafsiran statut yang tidak munasabah. Daripada perbincangan atas pentafsiran statut dan juga pentafsiran statut yang harmoni, apa-apa tribunal yang munasabah dinilai dengan fakta dan undang-undang dalam bidang jurisprudens ini akan memutuskan bahawa perayu dibaluti dengan locus standi kedua-duanya di bawah KTS dan juga statut-statut lain (lihat perenggan 40–45, 48 & 51).]

Notes

For cases on intention of statute, see 11(2) *Mallal's Digest* (5th Ed, 2015) paras 1913–1915.

Cases referred to

Adler v George [1964] 2 QB 7, QBD (refd)
CIT v Hindustan Bulk Carriers (2003) 3 SCC 57, SC (refd)
Chieng Hock Wong v Lim Guan Liong [2003] 6 MLJ 477, HC (refd)

Citibank Bhd v Mohamad Khalid bin Farzalur Rahaman & Ors [2000] 4 MLJ 96; [2000] 3 AMR 3475, CA (refd)
Corkery v Carpenter [1951] 1 KB 102 (refd)
Danaharta Urus Sdn Bhd v Kekatong Sdn Bhd (Bar Council Malaysia, Intervener) [2004] 2 MLJ 257; [2004] 2 AMR 317, FC (refd)
David Gramong v Rasit bin Tar [1991] 2 CLJ Rep 535, HC (refd)
Grey Pearson [1857] 6 ER 60 (refd)
Kesatuan Pekerja-Pekerja Bukan Eksekutif Maybank Bhd v Kesatuan Kebangsaan Pekerja-Pekerja Bank & Anor [2017] MLJU 260; [2017] 1 LNS 296, FC (refd)
Kumpulan Laudiri Sdn Bhd v Tang Kah Ung & 2 Ors [2004] 1 LNS 97, HC (not folld)
National Union of Bank Employees v Director General of Trade Unions & Anor [2015] 1 MLJ 881; [2015] 10 CLJ 62, CA (refd)
Nik Nazmi bin Nik Ahmad v Public Prosecutor [2014] 4 MLJ 157, CA (refd)
Nik Noorhafizi bin Nik Ibrahim & Ors v Public Prosecutor [2013] 6 MLJ 660; [2014] 2 CLJ 273, CA (refd)
Pathmanathan a/l Krishnan (also known as Muhammad Riduan bin Abdullah) v Indira Gandhi a/p Mutho and other appeals [2016] 4 MLJ 455, CA (refd)
Royal College of Nursing of the United Kingdom v Department of Health and Social Security [1981] 2 WLR 279, HL (refd)
Sim Seoh Beng & Anor v Koperasi Tunas Muda Sungai Ara Bhd [1995] 1 MLJ 292; [1995] 1 AMR 501, CA (refd)
Smith v Hughes [1960] 1 WLR 830 (refd)
Tebin bin Mostapa v Hulba-Danyal bin Balia & Anor [2016] MLJU 1577, HC (refd)
Teng Hung Ping v Hoan Siew Choo & Ors [1993] MLJU 601; [1993] 2 CLJ 662, HC (not folld)
Tunku Yaacob Holdings Sdn Bhd v Pentadbir Tanah Kedah & Ors [2016] 1 MLJ 200, FC (refd)

Legislation referred to

Administration of Estates Ordinance 1948 (Cap 80) ss 15, 17
Civil Law Act 1956 s 8(1)
Interpretation Act 1948 and 1968 s 17A
Sarawak Land Code (Cap 81) ss 132, 177, 178, 188, 218

Appeal from: Originating Summons No KCH-24–9/2 of 2016 (High Court, Kuching)

Albert Tang (Andy Tan) (Andy & Assoc) for the appellant.
Rajesh Jethi (Jethi & Assoc) for the respondents.

David Wong JCA (delivering majority judgment of the court):

INTRODUCTION

[1] We have read the draft grounds of our learned brother, Justice Hamid Sultan bin Abu Backer. However, with regret and respect, we are unable to concur with him on the outcome of this appeal. Hence the grounds herein are the views of myself and my sister Justice Umi Kalthum bt Abdul Majid and reasons as to what we think should be the outcome of this appeal.

[2] This appeal calls upon us to construct a provision in a statute, namely s 177 of the Sarawak Land Code ('s 177'), which would determine whether the appellant/plaintiff has the locus standi to remove a caveat in the context of the Sarawak Land Code ('the Land Code').

[3] The learned judge found that the appellant had no locus standi in the context of s 177 to remove a caveat on two parcels of land and hence dismissed the application by the appellant to remove the caveat. It is that decision which is appealed against by the appellant.

[4] We heard the appeal and reserved our decision as we were informed that there is no decision from this court on the interpretation of s 177 and the legal profession would benefit from a pronouncement together with full grounds from us. We have since further considered submissions from respective counsel and now give our decision and grounds.

BACKGROUND FACTS

[5] The appellant's father, one Hj Mostapa bin Asan, sometime in July 1986 entered a sale and purchase agreement to sell two parcels of land, namely Lot 96 Block Muara Land District and Lot 107 Block 7 Muara Tebas Land District ('the lands') to one Balia bin Munir, who is the late father of the respondents.

[6] The consideration for the sale was in the sum of RM10,368 which was fully paid by the respondents' father. However, the sale was conditional on the written consent of the Director of Lands and Surveys to be obtained by the appellant's father, failing which the sum of RM10,368 shall be refunded to the father of the respondents together with a similar sum as liquidated damages and the sale and purchase agreement shall be deemed as null and void with no further effect. However, there is no provision in the sale and purchase agreement as to when the aforesaid consent is to be obtained.

[7] The respondents' father on 31 July 1986 lodged a caveat on the lands vide instrument No L 8812/1986 ('caveat'). A

[8] The appellant's father passed away on 6 August 1986 and no consent from the Director of Lands and Surveys had ever been obtained by him. The appellant became the administrator of the estate of his father on 27 September 2010. B

[9] The father of the respondents passed away on 23 May 2012 with the respondents becoming the joint administrators of the estate of their father. C

[10] The appellant on 16 February 2016 filed this application to remove the caveat lodged by the father of the respondents on 31 July 1986.

GROUNDS OF OUR DECISION D

[11] As rightly pointed by the learned judge, this dispute can be resolved by determining the locus standi of the appellant in the context of s 177 which states as follows:

E

Procedure for removal

(1) Any registered proprietor or any other person having a registered estate or interest in the estate or interest against which a caveat has been lodged, may at any time, if he thinks fit, apply to the High Court for an order that the caveat be removed.

F

(2) The Court, upon proof that notice of such application has been duly served, may make such order in the premises, either ex parte or otherwise, as in the circumstances seems just.

[12] The respondents' contention is simply that the appellant is merely an administrator of his late father without any registered interest in the lands and hence has not fulfilled the requirement of s 177 to launch any action to remove the caveats. That contention was sustained by the learned judge who had thoroughly examined all the cases relating to the s 177 and concluded that the language used therein did not allow her to give it an interpretation as put forth by counsel for the appellant. G H

[13] The cases discussed by the learned judge are cases of the High Court and thus learned counsel for the appellant has urged us to depart from those interpretations as we are not bound by them. I

[14] Those High Court cases are *Chieng Hock Wong v Lim Guan Liong* [2003] 6 MLJ 477, *David Gramong v Rasit bin Tar* [1991] 2 CLJ Rep 535, *Kumpulan Laudiri Sdn Bhd v Tang Kah Ung & 2 Ors* [2004] 1 LNS 97 (HC)

and *Teng Hung Ping v Hoan Siew Choo & Ors* [1993] MLJU 601; [1993] 2 CLJ 662.

[15] In *David Gramong*, the issue there was whether the applicant armed with a registered full power of attorney has a registered interest in the context of s 177 to remove a caveat lodged by the registered owner of the land. Chong Siew Fai J (later the Chief Judge of Sabah and Sarawak) had this to say at p 538:

> Locus Standi
>
> For the respondent, it was firstly argued that the applicant could not bring this application under s 177(1) of the Land Code, he not being the registered proprietor of the land in question, nor a person 'having a registered estate or interest in the land'. The power of attorney granted in the applicant's favour, it was contended, merely constituted him an agent for the respondent (registered land proprietor) and did not confer upon the applicant any registered estate or interest in the land.
>
> Section 177(1) of the Land Code ('Cap 81') provides:
>
> > Any registered proprietor or any other person having a registered estate or interest in the estate or interest against which a caveat has been lodged, may ... apply to the High Court for an order that the caveat be removed.
>
> The word 'interest' is not defined in s 2 of the Land Code.
>
> In the instant case, the applicant is not merely a purchaser under contract but someone armed with a duly registered valid power of attorney conferring upon him wide range of powers including powers to effect dealings (as defined in s 2 of the Land Code) and to commence prosecute or enforce actions or legal proceedings relating to any matters in connection with the said lands. In my opinion the words 'registered interest' include a right, power or privilege validly granted over or in connection with land, at lease for the purpose of the said s 177(1) are broad enough to enable the applicant to make the present application.
>
> The unreported cases of *Loh Ing Kiong & Anor v Chiang Yong Tiong* (Sibu High Court Originating Motion No 2 of 1982) and *Chong Vui Chiung @ Chong Kuek Ming v Bath Pharmacy Sdn Bhd* (Kuching High Court Originating Motion No KG17 of 1989) cited for the respondent lack the features present in our instant case. In the former suit the applicants were mere purchasers under an agreement, and in the latter case, the plaintiff was a de bonis non administrator of a deceased's estate without any registered estate or interest of the landed property involved.

[16] In *Teng Hung Ping,* the applicant there was the administrator of the estate of Ting Chung Ho and had applied to remove a caveat lodged on a piece of land owned jointly by the deceased and the defendant. The defendant had raised a preliminary issue as to whether the applicant had the locus to do so in view of s 177. Richard Malanjum J (as he then was and now Chief Judge of Sabah and Sarawak) held as follows at p 664:

> First, I must state that the case of *Loh Ing Kiong & Anor v Chieng Yong Tiong* (unreported and under Sibu OM No 2 of 1982) cited by learned counsel for the defendants dealt with the issue of locus standi and s 177(1) of the said Code. His

Lordship, Chong Siew Fai J in his judgment said this:

> Section 177(1) of the Land Code provides, inter alia, that any person 'having a registered estate or interest' in the estate or interest against which a caveat has been lodged may apply for its removal. In the instant case the applicants entered an agreement (exh 'A' annexed to the applicants' affidavit made on 30 July 1982) whereby subject to fulfilment of the terms and conditions therein, the sublot in question is, in due course, to be transferred to them or their nominees. To that extent the applicants can be said to have an interest in the land. But have they a 'registered' interest? On the material before me, there is no evidence that they have a 'registered' interest or estate. I am also unable to agree that the word 'registered' can be read to mean 'registrable'. In the circumstance, the applicants have not established themselves to fall within s 177(1) of the Land Code and therefore have no locus standi to apply for the removal of the caveat thereunder.

...

Having read the judgment of that case and in view of the provision of s 177(1) of the said Code I entirely agree with the interpretation of s 177(1) as stated thereof. The element of 'registered interest or estate' is essential under the said s 177(1). As observed in the case of *David Gramong v Rasit bin Tar* [1991] 3 CLJ 2143 a registered power of attorney has satisfied the requirement of 'registered interest' under s 177(1) of the said Code.

...

It may appear to be harsh in construing s 177(1) of the said Code as such. But courts only interpret the provisions of statutes as they stand. Indeed in the case of *Malayan Banking Bhd v Pendaftar Hakmilik Negeri Pahang & Anor* [1991] 1 MLJ 119; [1990] 2 CLJ 999 Lamin J construed s 321(3)(b) of the National Land Code as to require the proprietor to be the applicant to have the registrar's caveat cancelled as the subsection of the National Land Code so provides.

In *Cheong Kong Enterprise Co Sdn Bhd v Foong Seong Mines Ltd & Ors* [1969] 2 MLJ 246; [1969] 1 LNS 24 the then Federal Court also made it clear the locus standi of the appellant in that case was governed by the provisions of the Land Code (Cap 138) either s 326(1) or s 327.

Anyway, I do not think the plaintiff is helpless in this case. In my view s 178 of the said Code should be available to him. Such a view has also been expressed by the learned author of the book entitled 'Caveats under the Sarawak Land Code (Cap 81) — Law and Practice' on p 80. In fact in the case of *Philip ak Jimmy v Ng Moi Kiew* (Sibu Civil Suit No 35 of 1979) (unreported) the personal representative of the estate of the deceased in that case invoked s 178 of the said Code to enable her to have the transfer to herself registered.

THE APPELLANT'S ARGUMENTS BEFORE US

[17] Counsel for the appellant urges us not to follow the decision in *Teng Hung Ping* and the other referred cases because they were decided 'per incuriam' which in plain language 'a decision made through want of care, through inadvertence or by mistake' (see *Kesatuan Pekerja-Pekerja Bukan Eksekutif*

Maybank Bhd v Kesatuan Kebangsaan Pekerja-Pekerja Bank & Anor [2017] MLJU 260; [2017] 1 LNS 296). Such decisions of course have no binding force on any court.

[18] It is submitted that those cases were decided without taking into consideration of s 218 of the Land Code which states as follows:

> 218 Legal representatives
>
> In any form under this Code, the description of any person as proprietor, transferor, transferee, chargor, chargee, lessor, lessee or sublessee, or as trustee, or as having or taking any estate or interest in any land, shall be deemed to include the heirs, executors and administrators and assigns of that person.

[19] Premised on s 218, it is submitted that by virtue of the definition of a proprietor to include an administrator, the description of a registered proprietor under s 177 must include an administrator which in this case before us means that the appellant as an administrator has the locus standi to apply for removal of caveat under s 177 of the Land Code. Not to recognise the appellant's locus standi would mean that an administrator of a deceased's estate cannot apply for removal of a caveat lodged against land under the estate but could sue or be sued in relation to the said land which forms part of the estate which in the eyes of learned counsel would be ludicrous interpretation of s 177 which courts should always avoid when construing a piece of legislation.

[20] Further counsel referred us to the provisions of the Administration of Estates Ordinance 1948 (Cap 80) and the Civil Law Act 1956 which, the former, in essence provide that all the property, estate and effects of the deceased shall vest in the administrator and that the administrator shall have the right and obligation to recover the same. The relevant provisions are:

(a) s 15 of the Administration of Estates Ordinance 1948 (Cap 80) provides:

> The issue by a Probate Officer of probate or letters of administration shall vest in the executor or administrator named therein, and if more than one, jointly, for the purpose of administration, all the property, estate and effects of the deceased set out in the list annexed to the grant and all property exempted under sub-section (1) of section 4.

(b) s 17 of the Administration of Estates Ordinance 1948 (Cap 80) provides:

> On obtaining probate or letters of administration the executor or administrator, as the case may be, shall forthwith —
>
> (a) collect and recover all the property, assets and effects covered by the grant; ...

(c) s 8(1) of the Civil Law Act 1956 provides:

> (1) Subject to this section, on death of any person all causes of action subsisting against or vested in him shall survive against, or, as the case may be, for the benefit of, his estate:
>
> Provided that this subsection shall not apply to causes of action for defamation or seduction or for inducing one spouse to leave or remain apart from the other or to any claim for damages on the ground of adultery.

[21] Considering the totality of the relevant provisions set out above, it is vehemently submitted by learned counsel that this court must give a purposive interpretation to s 177 such that it does not damage the statutory rights of an administrator. In the words of learned counsel, 'to hold that an administrator of a deceased's estate cannot apply for removal of caveat lodged against the land would mean that a deceased's right under s 177 of the Land Code is extinguished upon his death'.

[22] We must say that the argument put forth is not without merit or attraction. Looking at it in a holistic manner, a practical interpretation to s 177 would be to include an administrator like the appellant. However, courts must adhere to their paramount constitutional duty and that is not only to interpret but also to enforce the laws enacted. And in interpreting what the law is, the courts are to expound the language of the Act in accordance with settled rules of construction.

[23] The golden rule of interpretation in construing a statute is to ascertain the true intention of the Legislature and in doing that the courts are duty bound to adopt an approach that promotes the purpose or object underlying that particular statute. To ascertain the meaning of a clause in a statute, the whole statute must be looked at and not merely at the clause itself. Where the language of the words employed are clear and succinct giving no rise to any ambiguity, the courts must interpret them as they are. Only when there is some doubt from the words employed in the legislation can the courts adopt a purposive approach to the interpretation of legislation.

[24] Reverting back to s 177, it is housed in the Land Code of Sarawak. The Land Code is a 'Torrens Title' piece of legislation. Torrens title is a system of land registration, in which a register of land holdings maintained by the state guarantees an indefeasible title to those included in the register. Land ownership is transferred through registration of title instead of using deeds. The pivotal provision in the Land Code on the concept of indefeasibility and registration is s 132 which states as follows:

A (1) Subject to this Code, the registered proprietor of any estate or interest in land to which this section applies shall, except in the case of fraud, hold such estate or interest subject to the interests noted on the Register but free from all other interest except —

B (a) the estate or interest of a proprietor included in the Register in priority to the title under or through which the first mentioned registered proprietor claims, being an estate or interest to which this section applies;

(b) as regards any portion of land included in the issue document of title by virtue of a wrong description:

C Provided that this exception shall not apply if the registered proprietor is a purchaser in good faith and for value of the portion of land affected, or derives title through such a purchaser;

(c) the implied conditions, obligations and restrictions referred to in section 32;

D

(d) the interest of a tenant in possession of land for a term not exceeding one year;

(e) any charge affecting the land under any written law; and

E (f) any easement lawfully created and subsisting on the 1st day of January, 1958, or at such later date when the estate or interest affected by such easement becomes included in the Register.

(2) This section shall apply to any estate or interest in land included in the Register, other than an estate or interest included in a previous register under the former Land Ordinance (Cap 27 (1948 Ed)) and included in the Register by reason only of section 112(2) or an estate or interest acquired by a foreign person, foreign company, foreign corporation or foreign body in contravention of section 13A, 13B, 13C or 13E.

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G **[25]** Having established that the policy and rationale of the Land Code is that of registration, we now look at s 177. The paramount word in that section is undoubtedly the word 'registered'. In plain English, unless one has a registered interest in the scope of the Land Code, one has no locus standi, pure and simple. The Land Code, as we have mentioned earlier, is a Torrens title system which recognises registered interest only.

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[26] Under such circumstances, we are constitutionally duty bound to interpret the words as we find them. There is no room for us to interpret any other way. To do so would be entering into the realm of legislating which can never be the duty of the courts.

I

[27] Based on the above, we see no reason to accede to the interpretation given by learned counsel for the appellant. The interpretations given by two

Chief Judges of Sabah and Sarawak thus are entirely correct and are of both persuasive and high authorities. As pointed out by the present Chief Judge of Sabah and Sarawak, the appellant is not without remedy as he can still avail s 178 of the Land Code which provides that the appellant may have himself registered as the administrator of the estate of Hj Mostapa bin Asan. With such registration, he will have clothed himself with the locus standi to mount an action to remove the caveat.

CONCLUSION

[28] This is a case where we have given an interpretation to a statute which is reflective of the policy or rationale behind the legislation. The Land Code as alluded by us earlier is premised on the Torrens title system where registration is paramount. Section 177 is but one example within the Land Code recognising only registered interest only.

[29] Further, our interpretation is nothing more than an application of one of the basic principles of statutory interpretation known as 'generalia specialibus non derogant' which means universal things do not distract from specific things. This proposition of law says that when a matter falls under any specific provision, then it must be governed by that provision and not by the general provision. The general provisions must submit to the specific provisions of law. In this case, the Land Code in which s 177 is found is the specific legislation on land matters in Sarawak while the Administration of Estates Ordinance 1948 (Cap 80) and the Civil Law Act 1956 are general legislations relating to administration of estate.

[30] For reasons stated above, we see no error in the decision of the learned judge and hence we dismiss the appeal with costs in the sum of RM5,000 subject to allocatur fees. We also order the deposit be refunded.

Hamid Sultan JCA (delivering dissenting judgment of the court):

[31] The appellant's/plaintiff's appeal is against the decision of the learned High Court judge who refused to allow a caveat placed on the land of the deceased to be removed on the ground that the appellant as the administrator of the deceased has no locus standi to remove the caveat pursuant to s 177 of the Sarawak Land Code ('the SLC').

[32] Both the owner and purchaser of the property had died. The action was filed by the administrator of the estate of Hj Mostapa bin Asan and defendants being the administrator of the deceased purchaser. There is no dispute that the purchase consideration had been fully paid and the sale and purchase agreement is subject to the consent of the relevant authorities. The consent of

A the relevant authorities till date has not been obtained. The sale and purchase agreement was executed in 1986. The question before us is whether the appellant has locus standi to remove the caveat. If he has then the appeal need to be allowed and the matter need to be sent back to the High Court for the application of removal of the caveat to be heard on merits.

B

[33] The memorandum of appeal read as follows:

(1) The learned judge erred in dismissing the appellant's application for removal of caveat under section 177 of the Land Code (Cap 81).

C

(2) The learned judge ought to but failed to consider the significance of the Letters of Administration granted to the Appellant pursuant to and under the Administration of Estates Ordinance 1948 (Cap 80), in particular:

(a) the effect of section 15 thereof which vests in the Administrator/Appellant all the property, estate and effects of his deceased father; and

D

(b) the effect of section 17 thereof, which imposes on the Administrator to, inter alia, recover all the property, assets and effects covered by the grant/Letters of Administration.

E

(3) The learned judge erred in deciding that the Appellant did not have the locus standi to apply for removal of caveat under section 177 of the Land Code (Cap 81) when Appellant was not suing in his own personal capacity but was suing on behalf of his late father's estate, which indisputably has a registered interest in the land.

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(4) The learned judge erred in failing to appreciate the fact the right of the Appellant's late father to apply for removal of caveat did not cease to exist altogether upon his death but survived for the benefit of his estate.

(5) The learned judge erred in treating the application for removal of caveat as being made by the beneficiaries of the estate when the application was actually made by the administrator of the estate.

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(6) The learned judge, had she correctly applied the law on Administration of Estates Ordinance 1948 (Cap 80) and the Land Code (Cap 81) together, should have held that the Appellant has the locus standi to make the application for removal of caveat, and should have further held that there was gross and inexcusable delay on the part of the Respondents and their late father in commencing an action to enforce the Agreement of July 1986 and on this ground alone the application for removal of caveat ought to have been allowed.

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I

BRIEF FACTS

[34] The facts of the case as well as the law is well articulated by the learned High Court judge save as to the jurisprudence relating to harmonious

construction of statutes. I do not wish to repeat the facts in detail save to say that this judgment must be read together with the judgment of the High Court to appreciate our grounds in the proper perspective (see *Tebin bin Mostapa v Hulba-Danyal bin Balia & Anor* [2016] MLJU 1577).

[35] I will summarise the brief facts in my own words as follows:

(a) the plaintiff, administrator of the estate of the deceased who is the owner of the property filed an application to remove the caveat;

(b) the defendants as administrators of the deceased purchaser objected to the removal, inter alia, on the grounds that the plaintiff did not have locus standi to remove the caveat, under s 177 of the SLC which says:

> 177 Procedure of Removal
>
> (1) Any registered proprietor or any other person having a registered estate or interest in the estate or interest against which a caveat has been lodged, may at any time, if he thinks fit, apply to the High Court for an order that the caveat be removed.
>
> (2) The Court, upon proof that notice of such application has been duly served, may make such order in the premises, either *ex parte* or otherwise, as in the circumstances seems just.

And had relied on the following cases:

(i) *Chieng Hock Wong v Lim Guan Liong* [2003] 6 MLJ 477;

(ii) *David Gramong v Rasit Tar* [1991] 2 CLJ Rep 535;

(iii) *Kumpulan Laudiri Sdn Bhd v Tang Kah Ung & 2 Ors* [2004] 1 LNS 97 (HC); and

(iv) *Teng Hung Ping v Hoan Siew Choo & Ors* [1993] 2 CLJ 662;

(c) the plaintiff says that the cases which the defendant relies were made per incuriam as those cases did not consider the provision of s 218 of the SLC and also other sections of various statutes which we will set out shortly.

(d) on the issue of per incuriam the appellant relies on the recent Federal Court decision of *Kesatuan Pekerja-Pekerja Bukan Eksekutif Maybank Bhd v Kesatuan Kebangsaan Pekerja-Pekerja Bank & Anor* [2017] MLJU 260; [2017] 1 LNS 296, where it was stated:

> The Latin term 'per incuriam' means through want of care, through inadvertence or by mistake. A decision given per incuriam is given 'in ignorance or forgetfulness' of an earlier relevant case or an inconsistent legislative provision. *Osborn's Concise Law Dictionary* (8th Ed) says a decision of the court is not a binding precedent if given per incuriam ie without the

court's attention having been drawn to the relevant authority, or statute.

(e) in addition, the plaintiff says there is no Court of Appeal decision on s 177 of the SLC yet except the decision of the High Court. The said sections that the plaintiff relies on read as follows:

Section 218 of the SLC

218 Legal representatives

In any form under this Code, the description of any person as proprietor, transferor, transferee, chargor, chargee, lessor, lessee or sublessee, or as trustee, or as having or taking any estate or interest in any land, shall be deemed to include the heirs, executors and administrators and assigns of that person.

Section 15 of the Administration of Estates Ordinance 1948

15 The issue by a Probate Officer of probate or letters of administration shall vest in the executor or administrator named therein, and if more than one, jointly, for the purpose of administration, all the property, estate and effects of the deceased set out in the list annexed to the grant and all property exempted under subsection (1) of section 4.

Section 17 of the Administration of Estates Ordinance1948

17 On obtaining probate or letters of administration the executor or administrator, as the case may be, shall forthwith —

(a) collect and recover all the property, assets and effects covered by the grant;

(b) discharge thereout all the debts due by the deceased which are legally recoverable; and

(c) distribute the residue of the estate among the beneficiaries or heirs of the deceased, according to the will of the deceased or, as the case may be, in the shares to which they are entitled by recognised law or custom:

Provided that before distributing the residue of the estate the executor or administrator may reimburse himself out of the assets of the estate in respect of any monies paid by him on account of funeral expenses. Estate duty, other probate expenses, and any other necessary expenses incurred by him on behalf of the estate.

Section 8 of the Civil Law Act 1956

8 Effect of death on certain causes of action

(1) Subject to this section, on death of any person all causes of action subsisting against or vested in him shall survive against, or, as the case may be, for the benefit of, his estate:

Provided that this subsection shall not apply to causes of action for

defamation or seduction or for inducing one spouse to leave remain apart from the other or to any claim for damages on the ground of adultery.

(2) Where a cause of action survives as aforesaid for the benefit of the estate of a deceased person, the damages recoverable for the benefit of the estate of that person —

(a) shall not include any exemplary damages, any damages for bereavement made under subsection 7(3A), any damages for loss of expectation of life and any damages for loss of earnings in respect of any period after that person's death;

(b) in the case of a breach of promise to marry shall be limited to such damage, if any, to the estate of that person as flows from the breach of promise to marry; and

(c) where the death of that person has been caused by the act or omission which gives rise to the cause of action, shall be calculated without reference to any loss or gain to his estate consequent on his death, except that a sum in respect of funeral expenses may be included.

(3) No proceedings shall be maintainable in respect of a cause of action in tort which by virtue of this section has survived against the estate of a deceased person, unless proceedings against him in respect of that cause of action either —

(a) were pending at the date of his death; or

(b) are taken not later than six months after his personal representative took out representation.

(4) Where damage has been suffered by reason of any act or omission in respect of which a cause of action would have subsisted against any person if that person had not died before or at the same time as the damage was suffered, there shall be deemed, for the purposes of this section, to have been subsisting against him before his death such cause of action in respect of that act or omission as would have subsisted if he had died after the damage was suffered.

(5) The rights conferred by this section for the benefit of the estate of deceased persons shall be in addition to and not in derogation of any rights conferred on the dependants of deceased persons by section 7 and so much of this section as relates to causes of action against the estates of deceased persons shall apply in relation to causes of action under the said section as it applies in relation to other causes of action not expressly excepted from the operation of subsection (1).

(6) In the event of the insolvency of an estate against which proceedings are maintainable by virtue of this section, any liability in respect of the cause of action in respect of which the proceedings are maintainable shall be deemed to be a debt provable in the administration of the

A estate, notwithstanding that it is a demand in the nature of unliquidated damages arising otherwise than by a contract, promise or breach of trust.

B **[36]** The learned High Court judge had written a meticulous judgment giving literal interpretation to s 177 of the SLC based on a few judgments of the High Court. It would have been commendable if the learned counsel had brought to the attention of the court the concept of 'harmonious interpretation and/or construction of statutes' as there were more than one provision in the SLC as well as other statutes which had to be dealt with. I will elaborate on this C concept shortly.

[37] It must be noted that literal interpretation of statute per se is becoming the ghost of the past. The rules of interpretation of statutes, constitution and D procedural laws have distance themselves from literal rule of interpretation when the application thereof will lead to ambiguity or absurdity, etc (see *Citibank Bhd v Mohamad Khalid bin Farzalur Rahaman & Ors* [2000] 4 MLJ 96; [2000] 3 AMR 3475; *Danaharta Urus Sdn Bhd v Kekatong Sdn Bhd (Bar Council Malaysia, Intervener)* [2004] 2 MLJ 257; [2004] 2 AMR 317 (FC); E *Sim Seoh Beng & Anor v Koperasi Tunas Muda Sungai Ara Bhd* [1995] 1 MLJ 292; [1995] 1 AMR 501 (CA)). In *Citibank*'s case Gopal Sri Ram JCA sitting in the coram of the Federal Court had stated that:

(a) the courts have devised for themselves certain guidelines and F presumptions for the interpretation of statutes. His Lordship asserted that though they are called rules of construction they are not rules at all but merely guidelines. Further, His Lordship stated that the courts have formulated four different rules for the interpretation of statutes, which have been termed as the literal rule, the golden rule, the mischief rule G and the purposive rule. Further, His Lordship added that more recently Professor Rupert Cross formulated what he termed as 'the unified contextual approach'. This, His Lordship opines, in essence combines all these so called rules in a step by step process for the discovery of the meaning of the statutory language;

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(b) in analysing these rules the learned judge says that the suggested methods offer a different approach to the construction of statutes. For example, His Lordship says that the literal rule pays attention to nothing more and nothing less than the actual words used by the statute; the I golden rule permits the judicial interpreter in a very limited circumstance to supply an omission in a statutory provision where the literal approach leads to absurdity or injustice; the mischief rule looks to the state of the law at the time an Act was passed to see the mischief or

defect that Parliament seeks to remedy and the purposive approach, which is the refinement of the mischief rule, requires a court to look at the purpose of the Act; and

(c) in conclusion, His Lordship opines that despite the several available approaches, it is noteworthy that it is the purposive approach that has emerged to hold the field. His Lordship, asserts that this is reflected in s 17A of the Interpretation Act 1948 and 1968 which states that in the interpretation of a provision of an Act, a construction that would promote the purpose or object underlying the Act (whether that purpose or object is expressly stated in the Act or not) shall be preferred to a construction that would not promote that purpose or object.

[38] The learned High Court judge had dealt with the cases which has given literal interpretation to s 177 of the SLC. To save courts time I repeat what was said in the judgment and, inter alia, it read as follows:

Locus Standi of the plaintiff

11. In my view, this application can be disposed on one issue alone, which is whether the plaintiff, as administrator of his late father, has the locus standi to make the present application.

12. Learned counsel for the first and second defendant contended that the plaintiff being an administrator of his late father, the late Mostapa bin Asan, has not shown himself to have a registered interest in the land to cloth him with the necessary locus standi under s 177(1) of the Sarawak Land Code to remove the caveat, citing *Chieng Hock Wong v Lim Guan Liong* [2003] 6 MLJ 477.

13. Section 177 of the Sarawak Land Code states:

Section 177 Procedure for removal.

(1) Any registered proprietor or any other person having a registered estate or interest in the estate or interest against which a caveat has been lodged, may at any time, if he thinks fit, apply to the High Court for an order that the caveat be removed.

(2) The court, upon proof that notice of such application has been duly served, may make such order in the premises, either ex parte or otherwise, as in the circumstances seems just.

14. Section 177 clearly spells out the category of persons who has the legal standing to remove a caveat, namely, those who are 'registered proprietor' or 'having a registered estate or interest in the estate or interest against which a caveat has been lodged'.

15. In *Chieng Hock Wong*, the defendant was the registered proprietor of the land and the plaintiff granted the defendant a loan which was to be repaid in full failing which the defendant would transfer all his right, title and share in the land to the plaintiff and a memorandum of transfer was executed in favour of the plaintiff. The defendant did not repay the loan on its due date, hence the plaintiff took action to effect the transfer of the land to his name but it was rejected by the land registrar as

the defendant had lodged a caveat against the land. The plaintiff applied to remove the caveat which was dismissed on the ground that the plaintiff had no locus standi to make the application by virtue of s 177(1) of the Sarawak Land Code. Justice Clement Skinner (as he then was) held:

> A person who wishes to remove a caveat under the provision of s 177(1) of the Sarawak Land Code must show that he is either the registered proprietor of the said land or he is a person having a registered estate or interest in the said land. While the plaintiff might presently be in possession of a registrable instrument of transfer, that fact did not clothe him with the necessary locus standi under s 177(1) because that section specifically required the interest claimed to be a 'registered' interest. Thus, as the plaintiff had no locus standi to make this application, it must fail (see pp 481E, 1–482A, F); *Teng Hung Ping v Hoan Siew Choo @ Fan Siew Choo & 2 Ors* [1993] 2 CLJ 662 followed.

16. In *David Gramong v Rasit Tar* [1991] 3 CLJ 2143, the respondent was the registered proprietor of the land which he sold to the applicant. There was also an agreement between the applicant and the respondent whereby the applicant had to construct 250 double-storey concrete terrace houses for the respondent. The agreement granted the applicant a power of attorney empowering him with 'full power' to develop and to deal with the land. The applicant charged the land to a bank. The applicant failed to pay the balance of the purchase price within the stipulated time. In view of the non-payment of the balance of the purchase price and in fear that the applicant would create further charge on the land, the respondent lodged the caveat.

17. In allowing the application to remove the caveat, Justice Chong Siew Fai (as he then was) held:

> In the instant case, the applicant is not merely a purchaser under contract but someone armed with a duly registered valid power of attorney conferring upon him wide range of powers including power to effect dealings (as defined in s 2 of the Land Code) and to commence prosecute or enforce actions or legal proceedings relating to any matters in connection with the said lands. In my opinion the words 'registered interest' include a right, power or privilege validly granted over or in connection with land, at least for the purpose of the said s 177(1) and are broad enough to enable the applicant to make the present application.

18. In *Kumpulan Laudiri Sdn Bhd v Tang Kah Ung & 2 Ors* [2004] 1 LNS 97 (HC), the court held that by the power of attorney which granted the plaintiff entitlement to claim absolute possession of and interest concerning the plaintiffs sublots, coupled with the power to execute memorandum of transfer in respect of these sublots, the Plaintiff is clothed with locus standi under s 177 of the Sarawak Land Code.

19. In *Teng Hung Ping v Hoan Siew Choo & Ors* [1993] 2 CLJ 662, the plaintiff, an administrator of the estate of Ting Chung Ho, applied for the removal of a caveat lodged by the defendant, who together with the deceased, were the registered co-proprietor. The defendant raised a preliminary objection in respect of the plaintiff's locus standi in making the said application pursuant to s 177(1) of the Sarawak Land Code. Justice Richard Malanjum (now Chief Justice of Sabah and

Sarawak) held:

> [2] the plaintiff as administrator of the estate of the deceased had no such interest and as such had no locus standi to make the application for the removal of the caveat under s 177 of the Code.

21. In *Teng Hung Ping*, the learned judge referred to *Loh Ing Kiong & Anor v Chieng Yong Tiong* (unreported and under Sibu OM No 2 of 1982) where Justice Chong Siew Fai (as he then was) addressed the issue of locus standi under s 177(1) of the Sarawak Land Code, and uttered:

> Section 177(1) of the Land Code provides, inter alia, that any person 'having a registered estate or interest' in the estate or interest against which a caveat has been lodged may apply for its removal. In the instant case the applicants entered an agreement (exh 'A' annexed to the applicants' affidavit made on 30 July 1982) whereby subject to fulfilment of the terms and conditions therein, the sublot in question is, in due course, to be transferred to them or their nominees. To that extent the applicants can be said to have an interest in the land. But have they a 'registered' interest? On the material before me, there is no evidence that they have a 'registered' interest or estate. I am also unable to agree that the word 'registered' can be read to mean 'registrable'. In the circumstance, the applicants have not established themselves to fall within s 177(1) of the Land Code and therefore have no locus standi to apply for the removal of the caveat thereunder.

22. The learned judge in *Teng Hung Ping*, went on to say:

> Section 143 of the Land Transfer Act 1952 reads:
>
> (1) Any such applicant or registered proprietor, or any other person having any registered estate or interest in the estate or interest protected by the caveat, may, if he thinks fit, apply to the Supreme Court for an order that the caveat be removed.
>
> (2) The Court, upon proof that notice of the application has been served on the caveator or the person on whose behalf the caveat has been lodged, may make such order in the premises, either ex parte or otherwise, as to the Court seems meet [sic].

At p 490, Cooke J said this:

> As to standing, the more natural meaning in their context of the words of s 143(1) 'any such ... registered proprietor ...' appears to me to be any person who is the registered proprietor of the land at the time of the application under that section. The immediately following words 'or any other person having any registered estate or interest in the estate or interest protected by the caveat' support the view that the legislation is giving a summary remedy to persons currently on the register.

Further down at p 491 he continued to state this:

> I hold that a person who is not the registered proprietor at the time when the application is made is not 'Any such ... registered proprietor' within the meaning of s 143(1); and that accordingly the court cannot entertain the present application.

23. In *Eda Lee @ Lee Ada (f) v Lai Nam Fah* [2014] 1 LNS 1860, which concerned an application to remove a caveat by the plaintiff, an administratrix and trustee of the estate of the deceased, the registered owner of a parcel of land who sold a portion thereof to the defendant. The defendant then lodged a caveat on the land to protect his interest. The plaintiff was unable to register herself as the administratrix of the land because of the caveat on the land. Hence, she filed an application to remove the caveat. In dismissing the plaintiff's application, the learned Judicial Commissioner Mairin Idang @ Martin followed the decision in *Teng Hung Ping*.

24. In light of authorities referred to above, it is plainly clear that the plaintiff, as an administrator of his late father, does not have registered interest which entitled him to make the present application under s 177(1) of the Sarawak Land Code.

25. Learned counsel for the plaintiff submitted that the learned judge in *Teng Hung Ping and Pembinaan Masdamai Sdn Bhd v Me-Wong Builders Sdn Bhd* [1994] 3 CLJ 355, had applied unduly strict approach in construing s 177 of the Sarawak Land Code. It was submitted that in *Imoway Corporation (M) Sdn Bhd v Lim Ai Kiong* [2011] 5 CLJ 552, I had adopted the liberal approach in interpreting 'registered interest' in s 177 of the Sarawak Land Code as adopted by Justice Chong Siew Fai (as he then was) in *David Gramong*.

26. I regret to say that *Imoway* case, is of no assistance to the plaintiff. This is because the plaintiff in *Imoway*'s case has the requisite locus standi by virtue of a power of attorney which was granted to him based on the development agreement. The plaintiff here is an administrator of his late father's estate and the long list of authorities referred to above showed clearly that administrator has no 'registered interest' under s 177(1) of the Sarawak Land Code and hence has no locus standi to make the application for removal of caveat under s 177 of the same Code.

27. Learned counsel for the plaintiff further contended that in *Teng Hung Ping*, the learned judge overlooked the fact that the administrator of a deceased's estate is not suing in his own personal capacity but rather is suing on behalf of the deceased's estate, which undeniable has a registered estate or interest in the land. Since the action was not brought in the administrator's own personal capacity, it was not correct for the learned judge to consider whether the administrator has a registered interest in the land. The learned judge should have instead considered the rights and interests of the estate.

28. I respectfully disagree. In my view, it goes without saying, that when an administrator of a deceased's estate commences an action, it is done for the benefit of the estate of the deceased and never in his personal capacity. The law is fairly established that beneficiaries under intestacy have no interest or propriety in the personal estate of a deceased person until the administration of the latter's estate is complete and distribution made according to the law of distribution of the intestate estate (see *Low Hock Kev & Anor v Yap Meng Kan & Ors* [2003] 3 CLJ 470 and *Hong Leong Bank Bhd v Staghorn Sdn Bhd & Others Appeals* [2008] 2 CLJ 121 cited in *Chong Fook Sin v Amanah Rava Bhd & Ors* [2010] 7 CLJ 917).

29. In *Lee Ah Thaw & Anor v Lee Chun Tek* [1978] 1 MLJ 173, it was held that the appellants as residuary beneficiaries did not have a caveatable interest in the lands since the administration of the estate was incomplete and the residue was unascertained.

30. In view that a residuary beneficiary does not have a caveatable interest in the land until administration of the estate is complete, it logically follows that they also do not have any 'registered interest' in the land under s 177 of the Sarawak Land Code. So the plaintiffs argument that the court should consider the rights and interests of the beneficiary of the estate is a non-starter.

[39] What is clear from the decision of the learned High Court judge is, for the removal of the caveat the applicant must have locus standi and for that he must be 'registered proprietor or any other person having registered estate or interest in the estate or interest against which a caveat has been lodged'. The learned judge based on case laws was also prepared to give a concession by saying a power of attorney of the registered proprietor will have the locus. The learned judge was not prepared to acknowledge that an administrator of the estate of a deceased is a defacto owner and/or proprietor of the estate subject to the rights and obligations to the beneficiaries of the estate pursuant to various provisions of the law and statutes. In addition, the learned judge failed to appreciate the status of power of attorney originates from the SLC and/or common law, etc and not from the literal interpretation of s 177 of the SLC by itself. The case laws which have acknowledged a power of attorney to have locus standi strictly were not applying literal rule of interpretation or golden rule or mischief rule, etc. The acknowledgement of the decisions of courts to say that the power of attorney will have locus to remove a caveat will fall within the parameters of harmonious construction of statutes.

JURISPRUDENCE RELATING TO HARMONIOUS CONSTRUCTION OF STATUTE OR STATUTES

[40] It is trite that the principles relating to interpretation of statute is an invent of the common law courts. The often mentioned cannons of construction such as literal rule, golden rule, mischief rule (primary rules of construction) are strictly tools for the construction of statute. One common patent among the English judges in interpreting a statute was to be subservient to the legislation. This is quite understandable as the English judges have taken an oath to be subservient to the legislation and their preferred mode is to give strict legal effect to the statute. However, in cases where it will cause miscarriage of justice, they have formulated other concepts to justify that they are not in breach of the oath to be subservient to the legislation (see *Nik Noorhafizi bin Nik Ibrahim & Ors v Public Prosecutor* [2013] 6 MLJ 660; [2014] 2 CLJ 273; *Nik Nazmi bin Nik Ahmad v Public Prosecutor* [2014] 4 MLJ 157; *Pathmanathan a/l Krishnan (also known as Muhammad Riduan bin Abdullah) v Indira Gandhi a/p Mutho and other appeals* [2016] 4 MLJ 455). In countries like India and Malaysia, the judges take oath to preserve, protect and defend the constitution per se and not just to be subservient to legislation but admittedly they have to give effect to the statute law in a robust manner to maintain the rule of law. Thus, the concept of interpretation of statute, for

example in India has been given expanded dimension in contrast to England. Malaysian position has not been static either (see *Citibank*'s case). In *National Union of Bank Employees v Director General of Trade Unions & Anor* [2015] 1 MLJ 881; [2015] 10 CLJ 62, the Court of Appeal on interpretation of statute had this to say:

> (xii) Rule of law in judicial decision making process necessarily means the court must give utmost consideration to the Federal Constitution and when interpreting a statute must not forget that (i) law under the Federal Constitution means substantive law and procedure; (ii) literal rule per se is not the only tool to interpret statutes; and other provision of the law and tools have to be taken into consideration for example s 17A Interpretation Acts 1948 and 1967; the common law construction employed for social legislation; the concept of implied provision which must be read into the Act when relating to procedural fairness which we have stated earlier, etc. A literal interpretation of a statute without the application of rule of law is an invitation to be governed by rule by law and that is not part of our jurisprudence relating to 'Constitutional Supremacy' or for that matter 'Parliamentary Supremacy' and the courts are under a sacrosanct oath to ensure that the country is governed by rule of law and not rule by law as the oath of office of a judge is to 'preserve, protect and defend' the constitution. And members of the Malaysia Bar must never make a submission even ignorantly to impinge on our constitutional principles.

[41] The tools to interpretation of statute have traditionally been literal rule which is conservative in nature. The court is said to be obliged to interpret the statute according to the intent of Parliament. This will arise when the words of the statute in themselves are precise and unambiguous. The application of literal rule may at times result in absurd outcomes. For example, in the instant case, the court has refused to allow the administrator of the deceased estate to step into the shoes of the deceased to remove a caveat in the deceased property itself.

[42] The golden rule assist the courts to depart from applying the literal rule if the plain meaning will lead to absurdity or ambiguity. It is also well settled that the degree of absurdity or ambiguity necessary to rely on the golden rule is left in the hands of individual judge. This rule is one related to common sense when ambiguity or absurdity has arisen as a result of error by Parliamentary draftsmen and/or to avoid miscarriage of justice (see *Grey Pearson* [1857] 6 ER 60; *Adler v George* [1964] 2 QB 7).

[43] The mischief rule originating from the *Heydon*'s [1584] case in its application attempts to construe the statute to suppress the mischief and advance the remedy to achieve the objective of the legislation despite any inadequacy in the language employed by it. Mischief rule is also related to common sense and application thereof to avoid miscarriage of justice (see *Corkery v Carpenter* [1951] 1 KB 102; *Smith v Hughes* [1960] 1 WLR 830;

Royal College of Nursing of the United Kingdom v Department of Health and Social Security [1981] 2 WLR 279).

[44] The above rules were seen not to be adequate in interpretation of statute as well as to be inspired by common sense in the interpretation of statute to avoid miscarriage of justice. The courts then formulated the modern approach to statutory interpretation within the context of the legislative purpose. The purposive interpretation is said to be a derivation of the mischief rule and was intended to replace the mischief rule, the literal rule and the golden rule. In Malaysia, the purposive approach is partly codified under s 17A of the Interpretation Acts 1948 and 1967 (see *Citibank*'s case).

[45] From, further development from the above primary rules of construction, courts have ventured into what now is often said as harmonious construction of statute. This concept has two parts, one is harmonious construction in relation to the various provisions of the statute itself and the other part is in relation to other statutes. This doctrine is invoked when there is a conflict between the parts or provisions of the statute or between two or more statutes. This doctrine advocates five main principles, as set out by the Supreme Court of India in the case of *CIT v Hindustan Bulk Carriers* (2003) 3 SCC 57. They are as follows: (a) courts must avoid head on clash of seemingly contradicting provisions and they must construe the contradictory provisions so as to harmonise them; (b) the provision of one section cannot be used to defeat the provision contained in another unless the court, despite its effort, is unable to find a way to reconcile their differences; (c) when it is impossible to completely reconcile the differences in contradictory provisions, the courts must interpret them in such way so that effect is given to both the provisions as much as possible; (d) courts must also keep in mind that interpretation that reduces one's provision to a useless number or dead is not harmonious construction; and (e) to harmonise is not to destroy any statutory provision to render it fruitless.

[46] Learned author GP Singh on *Principles of Statutory Interpretation* (5th Ed) at pp 94–95 observes:

> It has already been seen that a statute must be read as a whole and one provision of the Act should be construed with reference to other provisions in the same Act so as to make a consistent enactment of the whole statute. Such a construction has the merit of avoiding any inconsistency or repugnancy either within a section or between a section and other parts of the statute. It is the duty of the courts to avoid 'a head on clash' between two sections of the same Act and, 'whenever it is possible to do so, to construe provisions which appear to conflict so that they harmonise'. It should not be lightly assumed that 'Parliament had given with one hand what it took away with the other'. The provisions of one section of a statute cannot be used to defeat those of another 'unless it is impossible to effect reconciliation between them'. The same rule applies in regard to sub-sections of a section. In the words of

A GAJENDRAGADKAR J: 'The sub-sections must be read as parts of an integral whole and as being interdependent; an attempt should be made in construing them to reconcile them if it is reasonably possible to do so, and to avoid repugnancy'. As stated by VENKATARAMA AIYAR J: 'The rule of construction is well settled that when there are in an enactment two provisions which cannot be reconciled with B each other, they should be so interpreted that, if possible, effect should be given to both. This is what is known as the rule of harmonious construction'. That, effect should be given to both, is the very essence of the rule. Thus a construction that reduces one of the provisions to a 'useless lumber' or 'dead letter' is not harmonious construction. To harmonise is not to destroy. A familiar approach in all such cases is C to find out which of the two apparently conflicting provisions is more general and which is more specific and to construe the more general one as to exclude the more specific. The principle is expressed in the maxims Generalia specialibus non derogan and Generalibus specialia derogant. If a special provision is made on a certain matter, that matter is excluded from the general provision. These principles have also been applied in resolving a conflict between two different Acts.

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And at p 98 observes:

When Reconciliation not possible

If two sections of an Act cannot be reconciled, as they may be absolute E contradictions, it is often said that the last must prevail. But this should be accepted only in the last resort. As observed by LORD EVERSHED MR: 'It is no doubt true that if two sections of an Act of Parliament are in truth irreconcilable, then prima facie the later will be preferred. But these are arguments of the last resort. The first duty of the court must be, if the result is fairly possible, to give effect to the whole F expression of the parliamentary intention'. In a case in which two provisos were somewhat repugnant to each other, LORD MACMILLAN said: 'If proviso 2 is repugnant in any way to proviso I, it must prevail for it stands last in the enactment and so to quote LORD TENTERDEN CJ, 'speaks the last intention of the makers'. The last word is with the respondent and must prevail'. But the rule that the later section should always be preferred in case it is irreconcilable with a prior section, G seems somewhat doubtful and illogical for as JERVIES CJ, observed during the course of arguments in a case: 'How can we say that one provision is repealed by the other when both received the Royal assent at the same time'? In case of conflict between two sections of the same Act a more logical approach is indicated by LORD HERSCHELL LC: 'You have to try and reconcile them as best as you may. If you cannot, you have to determine which is the leading provision, and which the H subordinate provision and which must give way to the other'.

And also at pp 98–99:

Avoiding uncertainty and friction in the system which the statute purports to regulate

I This principle has been stated by LORD SHAW in the following words: 'Where words of a statute are clear, they must, of course, be followed but in Their Lordships' opinion, where alternative constructions are equally open that alternative is to be chosen which will be consistent with the smooth working of the system which the statute purports to be regulating; and that alternative is to be rejected which will introduce uncertainty, friction or confusion into the working of the system'.

[47] In *Tunku Yaacob Holdings Sdn Bhd v Pentadbir Tanah Kedah & Ors* [2016] 1 MLJ 200 the Federal Court considered the 'settled general rule' that when a statute is susceptible of two or more interpretations, normally that interpretation should be accepted as reflecting the will of the legislation which is presumed to operate most equitably, justly and reasonably as judged by the ordinary and normal conceptions of what is right and what is wrong and of what is just and what is unjust.

DECISION OF THE HIGH COURT

[48] In the instant case, all the decisions cited by the learned High Court judge did not consider the provision of s 218 of the SLC which says, inter alia, (a) 'in any form under the code' and (b) 'any person as proprietor' shall deem to include 'administrators'. However, the court in *David Gramong* as well as *Kumpulan Laudiri* have recognised a power of attorney pursuant to s 188 of the SLC to stand in the position of registered proprietor. By applying a harmonious construction of the provisions of the statute an administrator ought to have locus standi. Such a construction will accord to common sense as well as avoid miscarriage of justice as well as absurdity in the construction of a statute and in Lord Shaw's word will avoid 'uncertainty, friction or confusion into the working of the system'. Such an approach will also be consonant with the concept of golden rule and/or harmonious construction of statute.

[49] *Teh Hung Ping*'s case can be distinguished. In that case there were two proprietors to the land and the administrator for the deceased was applying to remove the caveat placed by a co-proprietor. In essence, it was a fight between co-proprietors.

[50] There are also other statutes which recognise that the administrator of the deceased estate will step into the shoes of the deceased registered proprietor to act only within the parameters of the law. This is spelt out in ss 15 and 17 of the Administration Estates Ordinance 1948. In addition, s 8(1) of Civil Law Act 1956 will also support the proposition that the administrator of the deceased estate will step into the shoes of the registered proprietor to act within the parameters of the law and protect the property of the estate. That is to say, though he steps into the shoes of the deceased but what he can do is subject to what the legislation has provided. The legislation in respect of letters of administration will not say that he becomes absolute owner of the property. Letters of administration has its purpose and it provides the locus to act on behalf of the deceased as though the deceased was alive to protect and preserve the rights as the registered proprietor in the property and the rights of the beneficiaries.

A CONCLUSION

[51] I have read the appeal record and able submission of the parties. After giving much consideration to the submission of the learned counsel for the respondent, I take the view that the appeal should be allowed and the matter should be sent back to the High Court for the learned judge to hear the application for removal of the caveat on the merit. My reasons, inter alia, are as follows:

(a) from the deliberation on construction of statute as well as harmonious construction of statutes earlier, any reasonable tribunal appraised with the facts and laws in this area of jurisprudence will hold that the appellant is clothed with locus standi both under SLC as well as other statutes which I have mentioned earlier, to file an application for removal of the caveat; and

(b) as the learned judge did not deal with merit of the application for removal of caveat, this will be a fit and proper case to send it back to the High Court for merit to be heard.

[52] For reasons stated above, I will allow the appeal and set aside the judgment of the High Court with an order that the matter is sent back to the High Court for hearing the removal of the caveat application on merit with no order as to costs, with a note that the majority have dismissed the appeal.

Appeal dismissed with cost of RM5,000.

Reported by Kohila Nesan